

## Environmental Protection Agency

## § 80.536

provisions of this subpart for NRLM diesel fuel as if it had been produced after June 1, 2010.

(iii) The number of 500 ppm sulfur NRLM credits in gallons that are generated,  $C_{500}$ , shall be a positive number calculated as follows:

$$C_{500} = V_{15} - B_{MV}$$

Where:

$V_{15}$  = The total volume in gallons of 15 ppm diesel fuel produced or imported during the period stated under paragraph (c)(1)(i) of this section that is designated as either motor vehicle diesel fuel or NRLM diesel fuel.

$B_{MV}$  = As determined in § 80.533(d)(2).

(2) 500 ppm sulfur NRLM credits shall be generated and designated as follows:

(i) Credits shall be generated separately for each refiner or importer.

(ii) Credits may not be generated by both a foreign refiner and by an importer for the same diesel fuel.

(iii) Credits shall not be generated under both § 80.531 and this section for the same diesel fuel.

(iv) Any credits generated by a foreign refiner shall be generated as provided in § 80.620(c) and this section.

(3) No credits may be generated under this paragraph (c) after May 31, 2010.

(4) The refiner or importer must submit a report to the Administrator no later than August 31, 2010. The report must demonstrate that all the 15 ppm sulfur NRLM diesel fuel produced or imported which generated credits met the applicable requirements of paragraphs (c)(1) through (c)(3) of this section. If the Administrator finds that such credits did not in fact meet the requirements of paragraphs (c)(1) through (c)(3) of this section, as applicable, or if the Administrator determines that there is insufficient information to determine the validity of such credits, the Administrator may deny the credits submitted in whole or in part.

(d) *Generation of 500 ppm sulfur NRLM credits by small refiners from June 1, 2009 through December 31, 2013.* (1) Notwithstanding the dates specified in paragraph (c) of this section, during the period from June 1, 2009 through December 31, 2013, a refiner that is approved by the EPA as a small refiner under § 80.551 may generate credits under

paragraph (c) of this section during any compliance period as specified under § 80.599(a)(2) for diesel fuel produced or imported that is designated as NR or NRLM diesel fuel and complies with the provisions of § 80.510(b) or (c).

(2) The small refiner must submit a report to the Administrator no later than August 31 after the end of each calculation period during which credits were generated. The report must demonstrate that all the 15 ppm sulfur NR or NRLM diesel fuel produced or imported for which credits were generated met the applicable requirements of paragraphs (c)(1) through (c)(3) of this section. If the Administrator finds that such credits did not in fact meet the requirements of paragraphs (c)(1) through (c)(3) of this section, as applicable, or if the Administrator determines that there is insufficient information to determine the validity of such credits, the Administrator may deny the credits submitted in whole or in part.

(3) In addition, a foreign refiner that is approved by the Administrator to generate credits under § 80.554 shall comply with the requirements of § 80.620.

[69 FR 39175, June 29, 2004, as amended at 71 FR 25718, May 1, 2006]

### § 80.536 How are NRLM diesel fuel credits used and transferred?

(a) *Credit use stipulations.* Credits generated under § 80.535(a) and (b) may be used to meet the NRLM diesel fuel sulfur standard of § 80.510(a), and credits generated under § 80.535(c) and (d) may be used to meet the NR and NRLM diesel fuel sulfur standard of § 80.510(b) and (c), respectively, provided that:

(1) The credits were generated and reported according to the requirements of this subpart; and

(2) The conditions of this section are met.

(b) *Using credits generated under § 80.535.* Credits generated under § 80.535 may be used by a refiner or an importer to comply with the diesel fuel standards of § 80.510 (a), (b), and (c) by applying one credit for every gallon of diesel fuel that does not comply with the applicable standard.

(c) *Credit banking.* Credits generated may be banked for use at a later time

or may be transferred to any other refiner or importer nationwide for use as provided in paragraph (d) of this section.

(d) *Credit transfers.* (1) Credits generated under § 80.535 that are obtained from another refiner or importer may be used to comply with the diesel fuel sulfur standards of § 80.510(a), (b), and (c) if all the following conditions are met:

(i) The credits are used in compliance with the time period limitations for credit use in this subpart;

(ii) Any credit transfer is completed no later than August 31 following the compliance period when the credits are used to comply with a standard under paragraph (a) of this section;

(iii) No credit is transferred more than twice, as follows:

(A) The first transfer by the refiner or importer who generated the credit may only be made to a refiner or importer that intends to use the credit; if the transferee cannot use the credit, it may make a second and final transfer only to a refiner or importer who intends to use the credit; and

(B) In no case may a credit be transferred more than twice before it is used or it expires;

(iv) The credit transferor applies any credits necessary to meet the transferor's annual compliance requirements before transferring credits to any other refinery or importer;

(v) No credits are transferred that would result in the transferor having a negative credit balance; and

(vi) Each transferor supplies to the transferee records indicating the year the credits were generated, the identity of the refiner (and refinery) or importer that generated the credits, and the identity of the transferor, if it is not the same party that generated the credits.

(2) In the case of credits that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Invalid credits cannot be used to achieve compliance with the transferee's volume requirements regardless of the transferee's good faith belief that the credits were valid.

(ii) The refiner or importer that used the credits, and any transferor of the

credits, must adjust its credit records, reports and compliance calculations as necessary to reflect the proper credits.

(iii) Any properly created credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies credits as needed to meet the compliance requirements at the end of the calendar year, must first be applied to correct the invalid transfers before the transferor trades or banks the credits.

(e) *General limitation on credit use.* Credits may not be used to achieve compliance with any requirements of this subpart other than the standards of § 80.510(a), (b), and (c), unless specifically approved by the Administrator pursuant to a hardship relief petition under § 80.560 or § 80.561.

(f) *Use of high sulfur NRLM credits.* (1) High sulfur NRLM credits generated under § 80.535(a) or (b) may be used on a one-for-one basis to meet the NRLM diesel fuel sulfur standard of § 80.510(a) from June 1, 2007 through May 31, 2010. For example, one credit generated by the production or importation of one gallon of NRLM diesel fuel subject to the NRLM diesel fuel sulfur standard of § 80.510 (a) may be used to produce or import one gallon of NRLM diesel fuel that is exempt from the sulfur standard of § 80.510(a) during the period from June 1, 2007 through May 31, 2010.

(2) Any high sulfur NRLM diesel fuel produced after June 1, 2007 through the use of credits must—

(i) Be dyed red under the provisions of § 80.520 at the point of production or importation;

(ii) Be associated with a product transfer document that bears a unique product code as specified in § 80.590; and

(iii) Not be used to sell or deliver diesel fuel into areas specified in § 80.510(g)(1) or (g)(2).

(3) No high sulfur NRLM credits may be used subsequent to the compliance period ending May 31, 2010.

(4) Any high sulfur NRLM credits not used under the provisions of paragraph (f)(1) of this section may be converted into 500 ppm sulfur NRLM credits on a one-for-one basis for use under paragraph (g) of this section.

(g) *Use of 500 ppm sulfur NRLM credits.*

(1) 500 ppm sulfur NRLM credits generated under §80.535(c) or (d) or converted from high sulfur NRLM credits under paragraph (f)(3) of this section may be used on a one-for-one basis to meet the NR or NRLM diesel fuel sulfur standards of §80.510(b) or (c) from June 1, 2010 through May 31, 2014. For example, one credit generated by the production or importation of one gallon of NRLM diesel fuel subject to the NRLM diesel fuel sulfur standard of §80.510 (c) may be used to produce or import one gallon of NR diesel fuel that is subject to the sulfur standard of §80.510(a) during the period from June 1, 2010 through May 31, 2014.

(2) Any 500 ppm sulfur NR or NRLM diesel fuel produced or imported after June 1, 2010 through the use of these credits must—

(i) Bear a unique product code as specified in §80.590; and

(ii) Not be used to sell or deliver diesel fuel into areas specified in §80.510(g)(1) or (g)(2).

(3) No 500 ppm sulfur NRLM credits may be used after May 31, 2014.

[69 FR 39176, June 29, 2004]

#### §§ 80.537–80.539 [Reserved]

#### GEOGRAPHIC PHASE-IN PROVISIONS

#### §80.540 How may a refiner be approved to produce gasoline under the GPA gasoline sulfur standards in 2007 and 2008?

(a) A refiner that has been approved by EPA under §80.217 for the geographic phase-in area (GPA) gasoline sulfur content standards under §80.216 may apply to EPA for approval to produce gasoline subject to the GPA standards in 2007 and 2008. Such application shall be submitted to EPA, at the address provided in §80.595(b), by December 31, 2001. A foreign refiner must apply under the provisions of paragraph (n) of this section.

(b) The refiner must submit an application in accordance with the provisions of §§80.595 and 80.596. The application must also include information, as provided in §80.594(c), demonstrating that starting no later than June 1, 2006, 95 percent of the motor vehicle diesel fuel produced by the refinery for

United States use will comply with the 15 ppm sulfur standard under §80.520(a)(1), and that the volume of motor vehicle diesel fuel produced will comply with the volume requirements of paragraph (e) of this section.

(c) The Administrator may approve a refiner's application to produce gasoline subject to the GPA gasoline sulfur content standards in 2007 and 2008 if the provisions of paragraph (b) of this section are satisfied. In approving an application, the Administrator shall establish a motor vehicle diesel fuel volume baseline under §§80.595 and 80.596.

(d) From June 1, 2006 through December 31, 2008, 95 percent of the motor vehicle diesel fuel produced by a refiner that has been approved under paragraph (c) of this section to produce gasoline subject to the GPA gasoline sulfur standards in 2007 and 2008, must be accurately designated under §80.598 as meeting the 15 ppm sulfur standard of §80.520(a)(1).

(e) The total volume of motor vehicle diesel fuel produced for use in the United States and designated as meeting the 15 ppm sulfur standard under paragraph (d) of this section must meet or exceed 85 percent of the baseline volume established under paragraph (c) of this section, except that for the first compliance period from June 1, 2006 through June 30, 2007, the total volume must meet or exceed 92 percent of the baseline volume.

(f) Compliance with the volume requirements in paragraph (e) of this section shall be determined each compliance period. Annual compliance periods shall be from July 1 through June 30. For the year 2006, the compliance period shall be from June 1, 2006 through June 30, 2007.

(g) If a refiner fails to comply with the requirements of paragraph (d) of this section, or if the approval of the application, including the baseline, was based on false or inaccurate information, the approval to produce gasoline subject to the GPA gasoline sulfur content standards under this section during the years 2007 and 2008 shall be void ab initio, and gasoline produced for use in the GPA must meet the gasoline sulfur content standards of subpart H of this Part as if there had been no approval to produce gasoline subject to